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7 Attorneys for Complainant

8 **BEFORE THE**
STATE BOARD OF OPTOMETRY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke Probation
Against:

12 BEN E. LU, O.D.
13 1103 ½ Fair Oaks Avenue
South Pasadena, CA 91030

14 Optometrist License No. OPT 11014

15 and

16 BEN E. LU, O.D.
17 1727 Vermont Avenue #111
Los Angeles, CA 90027
18 (branch office canceled on 2/1/03)

19 Branch Office License No. BOL 6131

20 and

21 BEN E. LU, O.D.
dba DREXL OPTOMETRIC CENTER
22 3043 Foothill Blvd. #4
La Crescenta, CA 91214
23 (expired on 1/31/08)

24 Fictitious Name Permit No. FNP 3323

25 Respondent.

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Case No.

**PETITION TO REVOKE
PROBATION**

1 Complainant alleges:

2 **PARTIES**

3 1. Mona Maggio (Complainant) brings this Petition to Revoke Probation
4 solely in her official capacity as the Executive Officer of the State Board of Optometry,
5 Department of Consumer Affairs.

6 2. On or about March 3, 1998, the State Board of Optometry (Board) issued
7 Optometrist License No. OPT 11014 to Ben E. Lu (Respondent). The Optometrist License will
8 expire on April 30, 2010, unless renewed.

9 3. On or about February 16, 1999, the Board issued Branch Office License
10 No. BOL 6131 to Respondent for a secondary practice location at 1727 N. Vermont Avenue,
11 #111, Los Angeles, CA 90027. The Branch Office License expired on February 1, 2003.

12 4. On or about January 31, 2007, the Board issued Fictitious Name Permit
13 No. FNP 3323 to Respondent for an additional practice location at 3043 Foothill Blvd. #4, La
14 Crescenta, CA 91214. The Fictitious Name Permit expired on January 31, 2008.

15 5. In a disciplinary action entitled "In the Matter of Accusation Against: Ben
16 Ei Lu," Case No. 1999-254, the Board issued a Decision, effective June 18, 2005, in which
17 Respondent's Optometrist License and Branch Office License were revoked. However, the
18 revocation was stayed and Respondent's licenses were placed on probation for a period of six (6)
19 years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is
20 incorporated by reference.

21 **JURISDICTION**

22 6. This Petition to Revoke Probation is brought before the Board under the
23 authority of the following laws. All section references are to the Business and Professions Code
24 unless otherwise indicated.

25 **STATUTORY PROVISIONS**

26 7. Section 118, subdivision (b), provides that the suspension/expiration of a
27 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the
28 period within which the license may be renewed, restored, reissued or reinstated.

1 8. Section 3090 states:

2 "Except as otherwise provided by law, the board may take action against all
3 persons guilty of violating this chapter or any of the regulations adopted by the Board. The Board
4 shall enforce and administer this article as to licenseholders, and the board shall have all the
5 powers granted in this chapter for these purposes, including, but not limited to, investigating
6 complaints from the public, other licensees, health care facilities, other licensing agencies, or any
7 other source suggesting that an optometrist may be guilty of violating this chapter or any of the
8 regulations adopted by the Board."

9 **FIRST CAUSE TO REVOKE PROBATION**

10 **(Failure to Obey all Laws)**

11 9. **AT ALL TIMES AFTER THE EFFECTIVE DATE OF RESPONDENT'S**
12 **PROBATION, PROBATION CONDITION NUMBER 2 STATED:**

13 "Respondent shall obey all federal, state and local laws, and all rules governing
14 the practice of optometry in California."

15 10. Respondent's probation is subject to revocation because he failed to
16 comply with Probation Condition Number 2, referenced above, in that he failed to obey all laws.
17 Respondent violated section 3078, by practicing optometry under the Fictitious Business Name
18 of Drexel Optometric Center. Though this fictitious business name was originally registered
19 with the Board, Respondent failed to renew this registration and/or cancel said fictitious name
20 permit. Respondent also violated section 3070, as evidenced by inconsistencies with the practice
21 address that was registered with the Board. In September 2005, Respondent initiated a report of
22 a change of address from Suite #1 to Suite #4 at 3043 Foothill Blvd., La Crescent, CA 91214.
23 However, Respondent failed to complete the notification process to the Board and was therefore
24 practicing at an unregistered location. In addition, Respondent has been practicing optometry at
25 two confirmed Sterling Optical locations that are not registered with the Board. The practice
26 locations are 5544 E. Whittier Blvd., Commerce, CA and 1103 Fair Oaks Ave., Pasadena, CA
27 and as previously stated, Respondent has failed to register either of these two addresses of
28 practice with the Board.

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3 **SECOND CAUSE TO REVOKE PROBATION**

4 **(Failure to Cooperate with Probation Surveillance)**

5 11. AT ALL TIMES AFTER THE EFFECTIVE DATE OF RESPONDENT'S
6 PROBATION, PROBATION CONDITION NUMBER 3 STATED:

7 "Respondent shall comply with the Board's probation surveillance program;
8 including but not limited to allowing access to the probationer's optometric practice(s) and
9 patient records upon request of the Board or its agent."

10 12. Respondent's probation is subject to revocation because he failed to
11 comply with Probation Condition Number 3, referenced above, in that he failed to cooperate with
12 probation surveillance. The facts and circumstances regarding this violation are that Respondent
13 failed to comply with the self reporting portion of his probation. Respondent is required to
14 submit a Quarterly Report of Compliance to the Board every 3 months. The last report that
15 Respondent submitted is dated July 17, 2007.

16 **THIRD CAUSE TO REVOKE PROBATION**

17 **(Failure to Comply with Community Services - Free Services Provision)**

18 13. AT ALL TIMES AFTER THE EFFECTIVE DATE OF RESPONDENT'S
19 PROBATION, PROBATION CONDITION NUMBER 7 STATED:

20 "Within 60 days of the effective date of this decision, Respondent shall submit to
21 the Board for its prior approval a community service program in which Respondent shall provide
22 free **NON-OPTOMETRIC SERVICES** on a regular basis to a community or charitable facility or
23 agency for at least twenty (20) hours a month for the first thirty-six (36) months of probation."

24 14. Respondent's probation is subject to revocation because he failed to
25 comply with Probation Condition Number 7, referenced above, in that he has failed to submit a
26 community service program to the Board for approval. The facts and circumstances regarding
27 this violation are that Respondent failed to submit any documentation to the Board that he has
28 complied with this condition. The last correspondence received from Respondent regarding this

1 issue is dated July 20, 2007. The Board sent Respondent a correspondence letter dated October
2 2, 2007 to his community service contact, which has not been answered.

3 **FOURTH CAUSE TO REVOKE PROBATION**

4 **(Failure to Provide Evidence of an Education Program)**

5 15. AT ALL TIMES AFTER THE EFFECTIVE DATE OF RESPONDENT'S
6 PROBATION, PROBATION CONDITION NUMBER 8 STATED:

7 "Within 90 days of the effective date of this decision, Respondent shall submit to
8 the Board for its prior approval a plan for completing an educational program or course(s), which
9 shall not be less than 40 hours per year and which shall be completed during the first year of
10 probation. The program or course(s) shall be in addition to the Continuing Optometric Education
11 requirements for re-licensure, and shall be obtained with all costs being paid by Respondent. The
12 program or course(s) shall be related to the causes for discipline alleged in Accusation No. 1999
13 254. Respondent will be responsible for locating the educational program and course(s), and
14 submitting a plan for such program or course(s) to the Board for prior approval. Following the
15 completion of each course, the Board or its designee may administer an examination to test
16 Respondent's knowledge of the course. Respondent shall provide written proof of attendance in
17 such course or courses as are approved by the Board."

18 16. Respondent's probation is subject to revocation because he failed to
19 comply with Probation Condition Number 8, referenced above, in that he failed to provide
20 evidence of an education program to the Board. The facts and circumstances regarding this
21 violation are that Respondent failed to provide evidence to the Board that he has complied with
22 the education program condition.

23 **FIFTH CAUSE TO REVOKE PROBATION**

24 **(Failure to Comply with Cost Recovery Requirements)**

25 17. AT ALL TIMES AFTER THE EFFECTIVE DATE OF RESPONDENT'S
26 PROBATION, PROBATION CONDITION NUMBER 10 STATED:

27 "Respondent shall pay to the Board costs associated with its investigation and
28 enforcement pursuant to section 125.3 in the amount of \$24,247.25. Respondent shall be

1 permitted to pay these costs in a payment plan approved by the Board, with the total amount of
2 \$24, 247.25 paid in full within the first five (5) years of probation.”

3 18. Respondent’s probation is subject to revocation because he failed to
4 comply with Probation Condition Number 10, referenced above, in that he failed to pay the cost
5 recovery to the Board, as agreed. The facts and circumstances regarding this violation are that
6 Respondent signed an agreement for a payment plan of \$410.97 each month, until June 2010.
7 Respondent has made 13 payments of the currently required 35. The last payment Respondent
8 made was received on or about July 19, 2007.

9 **SIXTH CAUSE TO REVOKE PROBATION**

10 **(Failure to Comply with the Monitoring Condition of Probation)**

11 19. AT ALL TIMES AFTER THE EFFECTIVE DATE OF RESPONDENT’S
12 PROBATION, PROBATION CONDITION NUMBER 11 STATED:

13 “Within 30 days of the effective date of this Decision, Respondent shall submit to
14 the Board for its prior approval a plan of practice in which Respondent’s practice shall be
15 monitored by another optometrist, who shall provide periodic reports to the Board. Any cost for
16 such monitoring shall be paid by Respondent.

17 “The monitoring plan shall include a review of patient records and corresponding
18 billings, which will be chosen at random by the monitor. Monitoring of the Respondent’s
19 practice shall be in accordance with the Board’s probation monitoring program, the guidelines of
20 which are attached hereto as Exhibit B and incorporated by reference.

21 “If the monitor resigns or is no longer available, Respondent shall, within 15 days,
22 move to have a new monitor appointed, through nomination by Respondent and approval by the
23 Board.”

24 20. Respondent’s probation is subject to revocation because he failed to
25 comply with Probation Condition Number 11, referenced above, in that he failed to comply with
26 the monitoring condition of his probation. The facts and circumstances regarding this violation
27 are that Respondent discontinued the monitoring services provided by Dr. Carnevali, due to the
28 possible sale of his practice. Respondent has failed to report to the Board if the practice has in

1 fact been sold, or if he has obtained another monitor.

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4 **PRAYER**

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein
6 alleged, and that following the hearing, the Board issue a decision:

7 1. Revoking the probation that was granted by the Board in Case No. 1999
8 254 and imposing the disciplinary order that was stayed thereby revoking Optometrist License
9 No. OPT 11014 issued to Respondent.

10 2. Revoking the probation that was granted by the Board in Case No. 1999
11 254 and imposing the disciplinary order that was stayed thereby revoking Branch Office License
12 No. BOL 6131 issued to Respondent.


13 3. Revoking or suspending Optometrist License No. OPT 11014, issued to
14 Respondent.

15 4. Revoking or suspending Branch Office License No. BOL 6131 issued to
16 Respondent.

17 5. Revoking or suspending Fictitious Name Permit No. FNP 3323 issued to
18 Respondent.

19 6. Taking such other and further action as deemed necessary and proper.
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21 DATED: January 6, 2009

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24 MONA MAGGIO
25 Executive Officer
26 State Board of Optometry
27 Department of Consumer Affairs
28 State of California
Complainant

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Exhibit A

Decision and Order

State Board of Optometry Case No. 1999-254